APPEAL NO. 041704
FILED SEPTEMBER 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 et seq. (1989 Act). A contested case hearing was held on June 21, 2004. The hearing officer decided that the appellant (claimant herein) did not sustain a compensable injury; that the claimant knew or should have known that his disease may be related to his employment on _____; that respondent 1 (Carrier No. 1 herein) is not relieved from liability under Section 409.002; that the claimant had timely notified his employer pursuant to Section 409.001; and that, because the claimant did not sustain a compensable injury, the claimant did not have disability. The claimant files a request for review in which he argues that the hearing officer applied a burden of proof far beyond the preponderance of the evidence. Carrier No. 1 filed a response to the claimant's request for review, urging affirmance. The appeal file does not contain a response from respondent 2 (Carrier No. 2 herein).

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The question in this case was whether the claimant's leukemia was caused by his employment, wherein he had spent about 10 years delivering gasoline and other fuel products containing benzene. The claimant introduced evidence that there is a connection between exposure to benzene and acute myelogenous leukemia The claimant has been diagnosed with chronic myeloid leukemia. The claimant's oncolgist stated that, in his opinion, there was a reasonable medical probability that the claimant's leukemia was related to his work but that he could not prove it. The carrier introduced the report of a medical toxicologist that the claimant's witnesses had failed to lay the proper foundation for "specific causation," that is whether a substance caused a particular individual's injury. That report concluded that there was insufficient evidence to render a causation opinion.

We have held that the questions of injury and disability are questions of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ.

App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence on the issue of compensable injury, and it was the province of the hearing officer to resolve these conflicts. In determining whether there was a compensable injury, the hearing officer necessarily considered all the evidence regarding the injury. In making his statement that there appears to have been no serious consideration about whether some other factor, such as heredity, might have been responsible for the claimant's leukemia, the hearing officer was not reaching a conclusion that the claimant had to disprove every possible cause for his leukemia. He was evaluating the claimant's evidence in light of Merrell Dow Pharmaceuticals, Inc. v. Havner, 953 S.W.2d 706 (Tex. 1997), cert denied 523 U.S. 1119. In his opinion, the evidence was not persuasive for a couple of reasons, one of which was that there appeared to have been no serious consideration whether some other factor might have been responsible for the leukemia. We have previously held that a hearing officer may weigh the credibility of evidence using factors laid out in Havner, *supra*. Texas Workers' Compensation Commission Appeal No 031174, decided June 25, 2003. Applying the above standard of review, we find that the hearing officer's decision was sufficiently supported by the evidence in the record.

The decision and order of the hearing officer are affirmed.

The true corporate name of Insurance Carrier No. 1 is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

MR. RUSSELL RAY OLIVER, PRESIDENT
221 WEST 6TH STREET, SUITE 300
AUSTIN, TEXAS 78701-3403.

The true corporate name of Insurance Carrier No. 2 is **FAIRFIELD INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
350 NORTH SAINT PAUL STREET
DALLAS, TEXAS 75201.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Veronica L. Ruberto
Appeals Judge

_____
Edward Vilano
Appeals Judge